IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 94 (MS) OF 2004

Smt. Santosh Gilhotra and Others. ……Petitioners.

Versus

District Magistrate, Dehradun and another. ……..Respondents.

05.11.2004

Hon'ble Rajesh Tandon, J.

Heard Sri V.K. Kohili, Sr. Advocate assisted by I.P. Kohli counsel for the petitioners.

By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the order dated 22nd October, 2003 passed by the respondent no. 1 in Misc. Case No. 11 of 2001, Madan Lal Thukral Vs. Secretary Public Health and Welfare Society & others.

Briefly stated, the respondent no. 2 has started proceedings for vacancy. The petitioners are the landlord and the owners of the property and the property was in the tenancy of the respondent no. 2. He vacated the shop and handed over the possession to the petitioners.

Counsel for the petitioners has submitted that after getting the possession, the petitioners have preferred an application for release under Section 16 (1) (b) of the U.P. Act No. 13 of 1972. The Rent Control and Eviction Officer i.e. the S.D.M., Mussoorie has passed an order declaring the vacancy on 12.09.2001 in Case No. 19 of 1999.

An application was moved by the respondent no. 2 before the Rent Control and Eviction Officer on 12.09.2001 for review of the order which was allowed by the Rent Control and Eviction Officer

i.e. District Magistrate on 22.10.2003 by setting aside the judgment of the S.D.M. Massoorie declaring the vacancy.

The petitioners have challenged the order passed reviewing the vacancy order by way of present Writ Petition.

Counsel for the petitioners have submitted that in view of the provisions of Section 12/16 of U.P. Act No. 13 of 1972, there is no provision of review as the Act itself provides the procedure before declaring the vacancy and therefore, there is no occasion to entertain the review petition.

Sri. V.K. Kohli, Sr. Advocate has stated that once the District Magistrate has delegated his power to the S.D.M, and the vacancy was declared by the S.D.M., it was not open for the District Magistrate to have exercised the powers of review and pass the order recalling the order of vacancy.

Counsel for the respondent no. 2 Sri Vinay Kumar has submitted that in pursuance of the order of vacancy, he has already handed over the possession to the landlord.

The possession has already been taken by the landlord after the declaration of vacancy for which Sri Vinay Kumar has made no objection. He has submitted that in view of the declaration of vacancy the matter is not being contested on merits.

Consequently, the review was also not maintainable as there being no provision of reviewing the order.

In view of the above, writ petition is allowed. The order of vacancy passed by the S.D.M., Mussorrie on 12.09.2001 is confirmed.

(RAJESH TANDON, J.)

05.11.2004

P.S.R.